

**April 22, 2024 Oral Argument:**  
**[CJA, et al. v. JCOPE, et al. #CV-23-0115](#)**

**Calendar -- & Bench**

*This argument is without waiving – though, in fact, it cannot be waived – appellants’ entitlement, pursuant to [§100.3F of the Chief Administrator’s Rules Governing Judicial Conduct](#), to disclosure by the Court of its financial and other interests in this case, divesting it of jurisdiction pursuant to [Judiciary Law §14](#). The facts and law relating thereto, including this Court’s own 2008 decision in [People v. Alteri](#), 47 AD3d 1070 (2008), are at pages 12 to 19 of appellants’ brief. Appellants embodied their request for disclosure and determination of the Judiciary Law §14 jurisdictional issue in their motion to strike the respondents’ brief as a “fraud on the court” and for other relief ([NYSCEF #13](#)). The Court denied the motion, without decision, without facts, and without law ([NYSCEF #22](#)).*

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Among the most consequential cases to come before this Court was one, six years ago, the citizen-taxpayer action [Center for Judicial Accountability v. Cuomo, et al.](#), whose last *et al.* was then Chief Judge DiFiore. Its ten causes of action, to which appellants had a summary judgment entitlement, stood to powerfully restore lawful, constitutional governance to this state with respect to the state budget and how the Legislature operates and to end the scheme by which New York’s three government branches have colluded to procure and perpetuate judicial pay raises that are the product of “false instrument” reports – and to prevent their doing the same for legislative and executive pay raises. This Court “threw” *CJA. v. Cuomo...DiFiore* by a fraudulent 2018 decision – and the nuts and bolts of how this Court did what it did was set forth in a “legal autopsy”/analysis of that decision, accompanying appellants’ letter to the Court of Appeals in support of their appeal of right. The “legal autopsy”/analysis is part of the record herein, [NYSCEF #20](#), furnished by appellants’ reply affidavit in further support of their motion to strike and other relief, expressly “to protect against the Court’s repetition of what it did in [CJA v. Cuomo...DiFiore](#)<sup>fn3</sup>” ([NYSCEF #19](#), ¶10).

This case, [CJA v. JCOPE, et al.](#),<sup>1</sup> a hybrid Article 78 proceeding, declaratory judgment action, and citizen-taxpayer action, born on D-Day 2022, is perhaps even more consequential. Like *CJA v. Cuomo...DiFiore*, it is brought “on behalf of the People of the State of New York & the Public Interest”, and also has ten causes of action to which appellants have a summary judgment entitlement.

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<sup>fn3</sup> The link is to the full record of *CJA v. Cuomo...DiFiore* before this Court, posted on CJA’s website, at <https://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/record-app-div.htm>.”

<sup>1</sup> Hyperlink is to the Albany Supreme Court NYSCEF docket #904235-22.

The first five causes of action of the verified petition ([NYSCEF #1](#), ¶¶27-77) [R.65-80] are for mandamus, pursuant to Article 78, directing compliance with mandatory statutory and rule provisions for three entities charged with protecting the public from corrupt legislative and executive public officers: the presently-defunct JCOPE, the Legislative Ethics Commission, and the State Inspector General.

Additionally, as to the first and fifth causes of action, appellants expanded them by a verified amendment to their verified petition ([NYSCEF #84](#)) [R.651-R.654], for declarations that JCOPE and the IG’s handling of appellants’ complaints filed with them was “in violation of lawful procedure, affected by error of law, arbitrary, capricious, or an abuse of discretion” – this being the certiorari review of Article 78.

The sixth through ninth causes of action ([NYSCEF #1](#), ¶¶78-105) [R.81-93] are for declarations pertaining to the FY2022-23 state budget, with the basis, as to the sixth, seventh, and eighth causes of action, being enactment “in violation of mandatory provisions of the New York State Constitution, statutes, legislative rules, and caselaw”. Most important of these – and the cause of action required to be determined first amongst the ten causes of action – is the sixth cause of action (¶¶78-84) [R.81-84] for a declaration that the “ethics commission reform act of 2022”, replacing JCOPE with the Commission on Ethics and Lobbying in Government (COELIG), which was Part QQ of a non-appropriation, so-called “Article VII” budget bill, is, by its enactment, “unconstitutional, unlawful, and void”.

The tenth cause of action ([NYSCEF #1](#), ¶¶106-114) [R.94-96] is for a declaration that Public Officers Law §108.2(b), by allowing the Legislature to engage in closed-door party conferences to discuss routine public business, is unconstitutional, as *written and as applied*, violating the unequivocal declaration of Article III, §10 of the New York State Constitution “the doors of each house shall be kept open” and legislative rules consistent therewith.

The particulars as to how these ten iron-clad causes of action, seven requiring declarations, were dismissed by Supreme Court Justice Gandin’s appealed-from November 23, 2022 misnomered “Decision, Order and Judgment” ([NYSCEF #122](#)) [R.3-8], which is devoid of any “judgment”, makes not a single declaration, and so completely covers up Respondent Attorney General James’ conflict-of-interest-driven litigation fraud that it contains no reference to the AG, is particularized by appellants’ “legal autopsy”/analysis of the decision ([NYSCEF #121](#)). Spanning 31 single-spaced pages, it dissects the decision, line by line and appellants furnished it to Justice Gandin in support of their motion for reargument/vacatur of the November 23, 2022 decision ([NYSCEF #119](#)).

Neither AG James, by her opposition papers ([NYSCEF #126](#), [#127](#)), nor Justice Gandin, by his appealed-from February 15, 2023 decision denying the reargument/vacatur motion ([NYSCEF #130](#)), denied or disputed its accuracy, in any respect. Instead, because the “legal autopsy”/analysis is so devastating and decisive of the obliteration of all cognizable judicial process by an actually biased judge who made no disclosure of his interest, Justice Gandin simply concealed its existence – and appellants set that forth in a second “legal autopsy”/analysis, this of the February 15, 2023 decision, reprinted, in full, by their appeal brief ([NYSCEF #9](#), at pp. 7-8).<sup>2</sup>

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<sup>2</sup> This and all following NYSCEF links are from the AD3 docket #CV-23-0115.

Appellants' appeal brief expressly rests on these two "legal autopsy"/analyses, stating and demonstrating that they are dispositive of each of the four questions presented by their brief.

AG James' respondents' brief ([NYSCEF #12](#)), which Assistant Solicitor General Kiernan signed, proves this. It conceals, *in toto*, the two "legal autopsy"/analyses, whose accuracy it does not deny or dispute, just as, likewise, it conceals ALL the facts, law, and legal argument presented by the appellants' brief so as to purport that their appeal is "meritless" and "conclusory". Indeed, the respondents' brief cites to the appellants' brief in only three places (pp. 7, 8, 15), minimally identifying its content, which it falsifies.

Appellants made a fully-documented motion to strike the respondents' brief as a "fraud on the court" and for other relief ([NYSCEF #13](#), [#14](#), [#15](#)), to which they were absolutely entitled – and this is proven by the fashion in which this Court denied it, as already stated, without a decision, without facts, without law ([NYSCEF #22](#)). ([NYSCEF #25](#), at p. 4 (appellants' reply brief)).

This Court did the same, denying without decision and without facts and law ([NYSCEF #39](#)), appellants' fully-documented motion to have this appeal argued with the appeal in *Cuomo v. COELIG* ([#CV-23-1778](#)), notwithstanding the motion was unopposed ([NYSCEF #35](#)) and at issue in both is the constitutionality of the "ethics commission reform act of 2022" – with this appeal, by its sixth cause of action, in fact mooting *Cuomo v. COELIG* and exposing the fraud of the *Cuomo v. COELIG* plaintiff, defendant, and the so-called "good government" *amici* ([NYSCEF #29](#)).

I reserve the balance of my time – or such additional time as this Court may grant – for rebuttal of Assistant Solicitor General Kiernan's argument, as to which his respondents' brief requested only five minutes and which he can fill only by regurgitating its lies. The Court must not allow this. Rather, its duty – upon first confirming, from him, that the record is devoid of any evidence, or even a claim, that the AG's representation of the respondents is based on "the interest of the state", as [Executive Law §63.1](#) requires – is to require him to address appellants' two "legal autopsy"/analyses and the threshold first question of appellants' brief as to whether this Court, divested of jurisdiction by [Judiciary Law §14](#) based on the judicial pay raise and other corruption content of all appellants' complaints to JCOPE, LEC, and the IG that have given rise to this lawsuit – as to which "rule of necessity" cannot be invoked – have any option other than to transfer this case to federal court, including pursuant to Article IV, §4 of the United States Constitution: "The United States shall guarantee every State in the Union a Republican Form of Government" – or to certify the question to the Court of Appeals.